



Department of Defense
DIRECTIVE

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March 10, 1989
NUMBER 4100.15

ASD(P&L)

SUBJECT: Commercial Activities Program

- References:
- (a) DoD Directive 4100.15, "Commercial Activities Program," August 12, 1985 (hereby canceled)
 - (b) Executive Order (E.O.) 12615, "Performance of Commercial Activities," November 19, 1987
 - (c) Public Law (P.L.) 100-180, Section 1111, "National Defense Authorization Act for Fiscal Years 1988 and 1989," December 4, 1987
 - (d) Office of Management and Budget (OMB) Circular No. A-76, (Revised) "Performance of Commercial Activities," August 4, 1983
 - (e) through (o), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a).
2. Updates DoD policies and assigns responsibilities for commercial activities (CAs), as required by references (b), (c), and (d).

B. APPLICABILITY AND SCOPE

This Directive:

1. Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").
2. Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.
3. Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this Directive is mandatory for CAs when they are staffed partially with DoD civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.
4. Does not apply to DoD governmental functions as defined in enclosure 2.

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5. Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

6. Does not apply in times of a declared war or military mobilization.

7. Does not provide authority to enter into contracts.

8. Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33 (reference (e)).

9. Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

10. Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees, as described in FAR 37.104 (reference (f)).

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

1. Ensure DoD Mission Accomplishment. When complying with this Directive and its implementing Instruction, DoD Components shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

2. Achieve Economy and Quality through Competition. Encourage competition with the objective of enhancing quality, economy, and performance. When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. The restriction of a solicitation to a preferential procurement program does not negate the requirement to perform a cost comparison. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

3. Retain Governmental Functions In-House. Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

4. Rely on the Commercial Sector. DoD Components shall rely on commercially available sources to provide commercial products and services except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

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5. Delegate Decision Authority and Responsibility. DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.1 (reference (g)).

6. Share Resources Saved. When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation (reference (g)).

7. Provide Placement Assistance. Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Production and Logistics) (ASD (P&L)), or designee, shall:

a. Formulate and develop policy consistent with this Directive for the DoD CA program.

b. Issue Instructions to implement the policies of this Directive.

c. Maintain an inventory of in-house DoD CAs and the Commercial Activities Management Information System (CAMIS).

d. Establish criteria for determining whether a CA is required to be retained in-house for national defense.

e. Approve or disapprove core logistics waiver requests.

2. The Comptroller of the Department of Defense (C, DoD) shall provide inflation factors and/or price indices and policy guidance to the DoD Components on procedures and systems for obtaining cost data for use in preparing the in-house cost estimate.

3. The Heads of DoD Components shall:

a. Comply with this Directive and DoD Instruction 4100.33 (reference (e)).

b. Designate an official at the Military Service Assistant Secretary level, or equivalent, to implement this Directive.

c. Establish an office as a central point of contact for implementing this Directive.

d. Encourage and facilitate CA competitions.

e. Delegate, as much as practicable, broad authority to installation commanders to decide how best to use the CA program to accomplish the mission. Minimally, as prescribed by P.L. 100-180, Section 1111 (reference (c)) and E.O. 12615 (reference (b)), installation commanders shall have the authority and responsibility to carry out the following:

(1) Prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation in accordance with DoD Instruction 4100.33 (reference (e)).

(2) Decide which commercial activities shall be reviewed under the procedures and requirements of E.O. 12615, OMB Circular A-76, and DoD Instruction 4100.33 (references (b), (d), and (e)). This authority shall not be applied retroactively. Cost comparisons and direct conversions initiated, as of December 4, 1987, shall be continued.

(3) Conduct a cost comparison of those commercial activities selected for conversion to contractor performance under reference (d).

(4) To the maximum extent practicable, assist in finding suitable employment for any DoD employee displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

f. Develop specific national defense guidance consistent with reference (e).

g. Establish administrative appeal procedures consistent with reference (e).

h. Ensure that contracts resulting from cost comparisons conducted under this Directive are solicited and awarded in accordance with the FAR (reference (f)) and the DFARS (reference (h)).

i. Ensure that all notification and reporting requirements established in reference (e) are satisfied.

j. Ensure that the Freedom of Information Act Program (reference (i)) is complied with in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement.

k. Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the CA inventory and conducting the reviews and cost comparisons.

l. Provide, when requested, assistance to installation commanders to ensure effective CA program implementation and technical competence in management and implementation of the CA program.

m. Ensure that maximum efforts are exerted to assist displaced DoD employees in finding suitable employment, to include, as appropriate:

(1) Providing priority placement assistance for other Federal jobs.

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(2) Training and relocation when these shall contribute directly to placement.

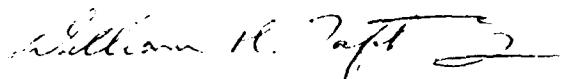
(3) Providing outplacement assistance for employment in other sectors of the economy with particular attention to assisting eligible employees to exercise their right of first refusal with the successful contractor.

n. Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

o. Ensure, once the cost comparison is initiated, that the milestones are met, and completion of the cost comparison is without unreasonable delay.

F. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant Secretary of Defense (Production and Logistics) within 120 days.



William H. Taft, IV
Deputy Secretary of Defense

Enclosures - 2

1. References
2. Definitions

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REFERENCES, continued

- (e) DoD Instruction 4100.33, "Commercial Activities Program Procedures," September 9, 1985
- (f) Federal Acquisition Regulation (FAR), March 26, 1984
- (g) DoD Directive 4001.1, "Installation Management," September 4, 1986
- (h) Defense FAR Supplement (DFARS), April 1984
- (i) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980
- (j) Public Law (P.L.) 98-525, Section 307, "Department of Defense Authorization Act of 1985," October 19, 1984
- (k) Public Law (P.L.) 99-145, Section 1231, "Department of Defense Authorization Act of 1986," November 8, 1985
- (l) Title 10, United States Code, Section 2464, "Core Logistics Functions"
- (m) Public Law (P.L.) 92-98, "The Javits-Wagner-O'Day Act," August 1971
- (n) Public Law (P.L.) 85-536, "The Small Business Act," July 18, 1958
- (o) Public Law (P.L.) 95-507, Section 8(a), "To Amend the Small Business Act and the Small Business Investment Act of 1958," October 24, 1978

DEFINITIONS

1. Commercial Activity Review. The process of evaluating CAs for determining whether or not a cost comparison shall be conducted.
2. Commercial Source. A business and/or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.
3. Conversion to Contract. The changeover of a CA from performance by DoD personnel to performance under contract by a commercial source.
4. Conversion to In-House. The changeover of a CA from performance under contract by a commercial source to performance by DoD personnel.
5. Core Logistics. Those functions identified as core logistics activities pursuant to Section 307 of P.L. 98-525 (reference (j)) and Section 1231 of P.L. 99-145 (reference (k)), codified at Section 2464, Title 10 (reference (l)) that are necessary to maintain a logistics capability (including personnel, equipment, and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situation, and other emergency requirements.
6. Cost Comparison. The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in DoD Instruction 4100.33 (reference (e)), to the cost of performance by contract.
7. Direct Conversion. Conversions to contract performance of an in-house commercial activity based on a simplified cost comparison or the conversion of an in-house commercial activity performed exclusively by military personnel.
8. Displaced DoD Employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination or grade reduction). It includes both employees in the function converted to contract and employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.
9. DoD Commercial Activity (CA). An activity that provides a product or service obtainable (or obtained) from a commercial source. A DoD CA may be the mission of an organization or a function within the organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in enclosure 3 of reference (e). A DoD CA falls into one of two categories:
 - a. Contract CA. A DoD CA managed by a DoD Component, but operated with contractor personnel.
 - b. In-House CA. A DoD CA operated by a DoD Component with DoD personnel.

10. DoD Employee. Civilian personnel of the Department of Defense.

11. DoD Governmental Function. A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions include those that require either the exercise of discretion in applying Government authority or the use of value judgement in making the decisions for the Department of Defense. Services or products in support of governmental functions, such as those listed in enclosure 3 of DoD Instruction 4100.33 (reference (e)), are CAs and are subject to this Directive and its implementing Instructions. Governmental functions normally fall into two categories:

a. Act of Governing. The discretionary exercise of governmental authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; management of natural resources on Federal property; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

b. Monetary Transactions and Entitlements. Refers to such actions as tax collection and revenue disbursements, control of treasury accounts and the money supply, and the administration of public trusts.

12. DoD Personnel. Military and civilian personnel of the Department of Defense.

13. Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion, unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

14. Installation. An installation is the grouping of facilities, collocated in the same vicinity, that supports particular functions. Activities collocated and supported by an installation are considered to be tenants.

15. Installation Commander. The commanding officer or head of an installation or a tenant activity, who has budget and supervisory control over resources and personnel.

16. New Requirement. A recently established need for a commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

17. Preferential Procurement Programs. Preferential procurement programs include mandatory source programs such as Federal Prison Industries (FPI) and the workshops administrated by the Committee for Purchase from the Blind and Other Severely Handicapped under P.L. 92-98 (reference (m)). Small, minority,

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and disadvantaged businesses; and labor surplus area set-asides and awards made under P.L. 85-536, Section 8(a) (reference (n)) and P.L. 95-507 (reference (o)) are included under preferential procurement programs.

18. Right of First Refusal of Employment. Contractors provide Government employees, displaced as a result of the conversion to contract performance, the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.